No. 18-966

IN THE

Supreme Court of the United States

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,
Petitioners,

v.

STATE OF NEW YORK, *et al.*,
Respondents.

On Writ of Certiorari Before Judgment to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICI CURIAE* FOUNDATIONS AND PHILANTHROPY-SERVING ORGANIZATIONS IN SUPPORT OF RESPONDENTS

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INTERESTS OF *AMICI CURIAE*[1]

Philanthropy plays an essential role in attaining our aspirations as a society and ensuring our nation's well-being. Philanthropy interacts with researchers, businesses, public officials, and community leaders to identify areas of need, innovate solutions to pressing problems, and target critically needed resources to address fundamental problems affecting children and families, public health, education, and economic development, among many other issues. The foundations and philanthropy-serving organizations that are signatories to this brief (collectively, the "Philanthropic Organizations") are representative of philanthropic organizations that serve diverse populations and neighborhoods throughout the nation in fulfilling these essential functions.[2]

The foundation *amici* primarily focus on funding programs and projects aimed at improving the well-being of underserved communities. The *amici* also include what are known as "philanthropy-serving organizations," which represent, bring together, and serve as a resource to foundations. Foundations and philanthropy-serving organizations such as these, working together, deploy their deep knowledge in

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[1] The parties have consented in writing to the filing of this *amicus curiae* brief. No counsel for a party in this case authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation of this brief. Printing and filing costs were paid for by the New Venture Fund, a nonprofit fund that has received contributions from some of the foundation *amici*. No person other than the New Venture Fund, the *amici curiae*, their members, or their counsel made a monetary contribution to this brief's preparation or submission.

[2] Appendix A identifies each *amicus curiae* and briefly describes its mission.

specific areas of expertise to leverage philanthropy's considerable resources to improve Americans' quality of life.

Philanthropic institutions and their grantees and partners[3] rely heavily on census data in conducting research and otherwise determining how to identify and best serve those populations with the greatest need. From that assessment, foundations award grants and allocate funds to address those needs. The Philanthropic Organizations, representative of this philanthropic community in general, thus have a strong interest in ensuring that the census accurately counts all members of the United States population. We identify throughout this brief the particulars of that interest.

Out of this need for accurate census data, many of the Philanthropic Organizations participated in the administrative process preceding this litigation by filing comments with the U.S. Department of Commerce that raised concerns about adding a citizenship question to the decennial census questionnaire.[4] These comments pointed out that inclusion of such a question would further discourage participation by

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[3] Partners include grantees of foundations, state and local government agencies, researchers, experts, community groups, businesses, and other key stakeholders.

[4] More than 300 leaders of nonpartisan philanthropic organizations submitted a comment letter to the U.S. Department of Commerce on August 2, 2018, expressing concerns about the addition of the citizenship question to the 2020 Census. *See A Letter from U.S. Philanthropic Leaders: Over 300 Grantmaking Executives from Across the Country – an Unprecedented Number – Join Together to Call for the Removal of the Citizenship Question on the 2020 Census Survey* 3-18 (Aug. 2, 2018), https://www.regulations.gov/document?D=USBC-2018-0005-22999.

immigrant communities and communities of color who already have been hard to count in past censuses.[5] The commenters raised concerns that the citizenship question had not undergone adequate testing to determine its impact on the accuracy of census data and argued that such testing was necessary, particularly in light of initial analyses suggesting that the question will result in significant further undercounting of populations that have been hard to count in the past.[6]

This *amicus curiae* brief is submitted to afford the Court the perspective of thirty broadly representative Philanthropic Organizations on the importance of accurate census data to their work and to provide the Court with their concerns regarding the adverse impacts that are almost certain to occur if the U.S. Department of Commerce is permitted to add the citizenship question to the 2020 Census.

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[5] *See, e.g.*, United Philanthropy Forum, *Comments on Proposed Information Collection on 2020 Census* 2 (Aug. 2, 2018), https://www.regulations.gov/document?D=USBC-2018-0005-23072 (stating that Blacks, Asians, Pacific Islanders, Middle Easterners and North Africans, American Indians and Alaska Natives, and Latinos may be reluctant to respond to the 2020 Census); *A Letter from U.S. Philanthropic Leaders*, *supra* note 4, at 2; The Bauman Foundation, *Comments on Proposed Information Collection on 2020 Census* (Aug. 2, 2018), https://www.regulations.gov/document?D=USBC-2018-0005-22943.

[6] *See, e.g.*, *A Letter from U.S. Philanthropic Leaders*, *supra* note 4, at 2; The Bauman Foundation, *supra* note 5, at 2.

SUMMARY OF ARGUMENT

Philanthropy plays a unique and central role in the United States in identifying public needs, supporting research, funding services by community-based organizations, and investing in programs related to a broad range of issues vital to the health and well-being of individuals and communities across the nation. This role is fulfilled across the fields of education, health, family well-being, and economic development, among many others. Philanthropic investments, whether directly undertaken by foundations or by their local, state, and national partners and grantees, benefit rural economies and urban neighborhoods alike, and serve a wide variety of underserved populations, including children, older adults, low-income households, persons with behavioral health needs, immigrants and refugees, people of color, and veterans.

Representative of philanthropic efforts more generally, the Philanthropic Organizations and the grantee organizations that the foundation *amici* fund depend on accurate census data to enable them to conduct critical research to assess the well-being of specific populations, identify disparities, propose tailored solutions, ascertain best practices, and track progress. Accurate data facilitate the most effective distribution of resources—allowing philanthropy to fill gaps in federal, state, and local services and direct funds to address critical challenges affecting communities in need.

The U.S. Census Bureau's own analyses strongly suggest that the addition of the citizenship question to the 2020 Census would decrease the overall response rate, resulting in a significant undercount of the national population. Other analyses that have been

conducted to date predict that the addition of the citizenship question to the 2020 Census is virtually certain to result in a sizable additional undercount of populations that have been traditionally hard to count in past censuses, including young children, immigrants, low-income families, communities of color, and people living in rural areas. Put simply, people concerned about government involvement in their lives, including their ability to remain in the country, are less likely to respond if asked about their citizenship. These analyses clearly establish that the U.S. Census Bureau should have thoroughly tested the citizenship question before adding it to the 2020 Census to measure and evaluate its full impact.

The serious adverse impact of inclusion of the untested citizenship question in the 2020 Census should not be underestimated. Increased inaccuracy would result in greater misallocations of resources in many of the more than 300 federal programs that are guided by census data, disproportionately affecting traditionally hard-to-count and underserved populations by hindering their access to critical resources such as health services, education, public transportation, and affordable housing. This outcome would intensify the demands on foundations' resources as they seek to provide support to populations that are distortedly underserved by government programs. As importantly, an undercount of these traditionally hard-to-count and traditionally underserved populations would impede philanthropic groups' own ability to determine how to allocate their resources to effectively serve the very communities that need them most.

Because the citizenship question has not been tested in any meaningful way, it is impossible fully to assess its impact on the quality of census data or the serious ripple effects of the anticipated undercount on governments, philanthropic groups, grantees, and the public at large. The available data give every reason to believe, however, that the effects would be significant and negative. Given the consequential risks that inclusion of the citizenship question poses to the flow of critical assistance to communities in need, and the fact that it is too late for the U.S. Census Bureau to thoroughly test the citizenship question before its inclusion, the Philanthropic Organizations urge the Court to uphold the ruling of the District Court and set aside the U.S. Department of Commerce's decision to add the untested citizenship question to the 2020 Census.

ARGUMENT

I. PHILANTHROPY'S IMPORTANT ROLE IN AMERICAN SOCIETY

The impact of philanthropy in our nation is broad and deep. In 2017, foundations provided close to $67 billion to a myriad of causes throughout the United States.[7] Philanthropic organizations improve Americans' well-being across a wide spectrum of circumstance and need, relating to matters of education, family, and health. Their outreach spans rural economies and urban neighborhoods alike and serves a wide variety of underserved populations, including children and youth, older adults, low-income households, persons with behavioral health needs, immi-

[7] Charity Navigator, *Giving Statistics*, https://www.charitynavigator.org/index.cfm?bay=content.view&cpid=42 (last visited Mar. 26, 2019).

grants and refugees, and veterans.[8] Funders frequently partner with community-based organizations, state, local, and municipal governments, cross-sector coalitions and networks, hospitals and healthcare systems, and housing agencies to help achieve their beneficial goals.[9]

Philanthropic entities invest in diverse strategies to equip communities with resources to improve the lives of their members. In the education field, charitable foundations and their grantees help to narrow the achievement gap, especially among students of differing socioeconomic and racial backgrounds, by supporting improved curricula and teacher training, partnering with leading universities, and revitalizing failing schools.[10] In the field of health, philanthropic groups and grantees address root causes of health disparities and increase access to health services, tackling long-standing problems such as childhood obesity and chronic disease, as well as emerging issues such as behavioral health, trauma, and substance abuse.[11]

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[8] *See* Kristina Gray-Akpa, Grantmakers in Health, *Philanthropy's Role in Addressing Neighborhood Conditions that Shape Health* 8 (2018), http://www.gih.org/files/FileDownloads/Philanthropy%E2%80%99s%20Role%20in%20Addressing%20Neighborhood%20Conditions%20That%20Shape%20Health.pdf; Washington Monthly, *Successes in Philanthropy*, https://philanthropy.washingtonmonthly.com/ (last visited Mar. 26, 2019).

[9] *See* Gray-Akpa, *supra* note 8, at 9.

[10] *See* Richard André, *How Philanthropy is Influencing Education Reform in the United States*, AMERICAS SOCIETY/COUNCIL OF THE AMERICAS (May 16, 2011), https://www.as-coa.org/articles/how-philanthropy-influencing-education-reform-united-states.

[11] *See* Tym Rourke, *Curbing Substance Misuse*, WASHINGTON MONTHLY, https://philanthropy.washingtonmonthly.com/portfolio_

Foundations regularly fund community-based services such as after-school programs, soup kitchens, and other types of human services. Foundations and their grantees help to lift both urban and rural communities out of poverty by building critical infrastructure, investing in real estate, creating safe and affordable housing, providing financial education, and fostering local partnerships with mission-driven lenders and financial institutions.[12]

In addition, foundations and philanthropy-serving organizations regularly support and carry out data-based research pertaining to issues such as health, child well-being, and economic development. For example, organizations like the Minnesota Council on Foundations have developed data indexes based on census-derived data that are used widely by government agencies and officials, businesses, and community-based organizations to track key economic and social patterns.[13] The indexes, reports, and analyses that foundations, philanthropy-serving organizations, and their partners generate help to draw attention to problems affecting vulnerable communities, contribute to a shared understanding of critical issues, and serve to inspire policymakers from diverse

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page/curbing-substance-misuse/ (last visited Mar. 26, 2019); Gray-Akpa, *supra* note 8, at 4.

[12] *See* Gray-Akpa, *supra* note 8, at 5-6, 19-20; Susanna Hegner, *Seeding Rural Opportunity*, WASHINGTON MONTHLY, https://philanthropy.washingtonmonthly.com/portfolio_page/seeding-opportunityin-rural-america/ (last visited Mar. 26 2019).

[13] *See* Minnesota Compass, https://www.mncompass.org/ (last visited Mar. 26, 2019).

ideological perspectives to begin discussing issues and working together to find solutions.[14]

There is, in short, no vital area of human or community need that philanthropy does not seek to address.

II. THE IMPORTANCE OF ACCURATE CENSUS DATA TO PHILANTHROPIC INSTITUTIONS AND THEIR GRANTEES AND PARTNERS

Accurate census data are essential to the work of philanthropy. Foundations, philanthropy-serving organizations, and their partners and grantees regularly rely on decennial census data and other government data sources derived from decennial census data in identifying issues that need to be addressed, evaluating potential programs, setting strategic priorities, and measuring progress.

A. Numerous Data Sources Depend on Accurate Decennial Census Data

The accuracy of the decennial census has broad implications. If the decennial census does not include an accurate count of the population in the communities where they reside, then federal, state, and local governments will have inaccurate information regarding the composition of their populations and will be ineffective in allocating government resources and services to those communities that need them the most.

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[14] *See* William P. O'Hare, *Development of the Child Indicator Movement in the United States*, 6 CHILD DEVELOPMENT PERSPECTIVES 79, 80 (2011).

Decennial census results significantly impact the accuracy of a wide array of other important data sources and surveys both inside and outside government. Each year, the U.S. Census Bureau uses current data on births, deaths, and migration to calculate population change since the most recent decennial census and produce annual population estimates for the nation as a whole, as well as states, counties, cities, and towns.[15] In addition, the Census Bureau uses decennial census data and the annual population estimates in designing and conducting the American Community Survey (the "ACS"), an ongoing national survey that provides important data annually about a wide range of measures, including ancestry, educational attainment, income, language proficiency, migration, disability, employment, and housing.[16] The Census Bureau uses the core demographics from its annual population estimates—sex, age, race, ethnicity, and geographic area—to guide the design of ACS sampling, determine how to fill in gaps in survey responses, make adjustments to the weight given to each household's response, and estimate sampling error.[17] These procedures correct for differ-

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[15] *See* U.S. Census Bureau, *American FactFinder*, https://factfinder.census.gov/faces/nav/jsf/pages/programs.xhtml?program=pep (last visited Mar. 26, 2019).

[16] *See* Andrew Reamer, *Census-derived Datasets Used to Distribute Federal Funds* 5-7, 9 (2018), https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/Counting%20for%20Dollars%20%234%20Census-derived%20Datasets%20rev%2001-19.pdf.

[17] *See id.* at 5-7; U.S. Census Bureau, *Understanding and Using American Community Survey Data: What All Data Users Need to Know* 6 (July 2018), https://www.census.gov/content/dam/Census/library/publications/2018/acs/acs_general_handbook_2018.pdf; U.S. Census Bureau, *American Community Survey Design and Methodology* 135-67 (Jan. 2014), https://www2.

ences between the characteristics of the survey samples and those of the population as a whole and ensure that ACS data are consistent with official Census Bureau population estimates by age, sex, race, and ethnicity.[18]

Likewise, numerous other federal surveys—including the Current Population Survey, the Consumer Expenditure Survey, and the American Housing Survey—rely on data from the decennial census in creating survey samples, weighting responses, and determining sampling error.[19] In total, "[f]ifty-two datasets derived from the Decennial Census are used to guide the geographic distribution of federal funding."[20] To the extent the decennial census data are inaccurate, those inaccuracies will distort the Census Bureau's annual population estimates. In turn, this will lead to inaccuracies in the ACS and numerous other government and non-government surveys that are based on the annual population estimates.[21]

A long list of federal, state, and local government agencies rely on census data, ACS data, and other datasets derived from decennial census data in analyzing populations and determining how best to allocate resources.[22] Approximately 320 federal programs rely

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census.gov/programs-surveys/acs/methodology/design_and_methodology/acs_design_methodology_report_2014.pdf.

[18] *See* Reamer, *supra* note 16, at 7.

[19] *See id.* at 5-7.

[20] *Id.* at 5.

[21] *See* William P. O'Hare, *Differential Undercounts in the U.S. Census: Who Is Missed?* 18 (2019).

[22] *See* Reamer, *supra* note 16, at 4; American Community Survey Office, U.S. Census Bureau, *American Community*

on census data or census-derived data in determining how to allocate federal funding; these programs distributed over $880 billion in federal funds to states, localities, and households across the nation during fiscal year 2016.[23]

B. Philanthropic Organizations and Their Grantees and Partners Rely Heavily on Census Data and Census-Derived Data

Like government entities, the Philanthropic Organizations and their partners rely on decennial census data and other federal data sources derived from decennial census data to better understand the problems facing the communities they serve and to determine the programs and services that will make the greatest difference in the lives of underserved populations. Foundations use census data in assessing how to distribute grants and other resources in effective ways. Foundations' grantees rely on census data in determining geographic areas where their efforts would be most valuable, identifying issues facing the communities with which they partner, advocating for improved programs and services, and measuring progress toward goals. Census data have far-reaching impact on the Philanthropic Organizations' work involving, among other issues, children and families, public health, education, poverty, and economic development.

Survey: Handbook of Questions and Current Federal Uses (Oct. 2014), https://www.census.gov/content/dam/Census/programs-surveys/acs/operations-and-administration/2014-content-review/ACS_Federal_Uses.pdf; Daniel L. Cork, National Research Council of the National Academies, *Benefits, Burdens, and Prospects of the American Community Survey* (2013), https://www.nap.edu/read/18259/chapter/1.

[23] Reamer, *supra* note 16, at 1.

For instance, Philanthropy Ohio, Philanthropy California, and the Sapelo Foundation, among other *amici*, rely on census data and census-derived data to collect and analyze information relating to child welfare and education. *Amici* such as the Samuel S. Fels Foundation, the Kresge Foundation, and the Piton Foundation provide grants to nonprofit organizations that utilize census data in their efforts to promote access to economic opportunity. Organizations like United Ways of California work to support low-income families and individuals who depend on federal programs that may be severely underfunded at the state and local level if census data are inaccurate. The detailed examples that follow, which are diverse in both geography and subject matter, further illustrate some of the many ways in which the Philanthropic Organizations and their partners depend upon census data and census-derived data.

1. Children and Families

Since 1990, the Annie E. Casey Foundation (the "Casey Foundation") has utilized decennial census data and interim population surveys benchmarked against the census, such as the ACS, to assess the well-being of children and families, identify and analyze the problems they face, document disparities among the population, propose potential solutions, and evaluate the efficacy of program investments already in place. Among its most influential resources, the Casey Foundation maintains the KIDS COUNT Data Center, a publicly accessible website that accumulates and distills the best available local, state, and national data and statistics on the educational, social, economic, and physical well-being

of children in the United States.[24] Additionally, the Casey Foundation publishes annually its *KIDS COUNT Data Book*, which uses sixteen indicators to track the well-being of children across the United States on both a national and state level.[25] Much of the data in these resources is taken from the decennial census, the Current Population Survey, and the ACS.[26] State legislators, public officials, and child advocates use these KIDS COUNT resources as a guide to define policy, implement targeted solutions, and more effectively allocate funds to improve the lives of children and families across the United States.[27]

Many other local child advocacy organizations also use census data and census-derived data to study and report on child well-being throughout the nation. For example, the Children's Defense Fund-Ohio ("CDF-Ohio"), a grantee of the Casey Foundation, uses decennial census data and ACS data to track the needs of children in the state and develop targeted solutions. In preparing its annual *KIDS COUNT* reports for the state, CDF-Ohio analyzes decennial census data and ACS data on a statewide and county-by-county basis

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[24] *See* The Annie E. Casey Foundation, *Kids Count Data Center*, https://datacenter.kidscount.org/ (last visited Mar. 26, 2019).

[25] *See* The Annie E. Casey Foundation, *2018 KIDS COUNT Data Book: State Trends in Child Well-Being* (2018), https://www.aecf.org/m/resourcedoc/aecf-2018kidscountdatabook-2018.pdf; William P. O'Hare, *A Case Study of Data-Based Child Advocacy: The KIDS COUNT Project*, 6 CHILD INDICATORS RESEARCH 33 (July 21, 2012).

[26] *See* The Annie E. Casey Foundation, *supra* note 25; O'Hare, *supra* note 25.

[27] *See* The Annie E. Casey Foundation, *KIDS COUNT*, https://www.aecf.org/work/kids-count/# (last visited Mar. 26, 2019).

and reports on which populations of children are most affected by poverty.[28] CDF-Ohio then makes recommendations for improving the economic well-being of Ohio children and their families.[29]

Similarly, Advocates for Children of New Jersey ("ACNJ"), a grantee of the Casey Foundation and The Fund for New Jersey, uses tract-level decennial census data to create interactive maps on key topics affecting children and to report on those topics in its annual *KIDS COUNT* reports.[30] In its *Newark Kids Count* reports, ACNJ cross-references census data on households with children with data from the Centers for Disease Control on lead testing results throughout the City of Newark.[31] These analyses have allowed ACNJ to identify specific neighborhoods in which targeted outreach may be necessary to ensure that young children are tested for the presence of lead.[32] The organization's findings are shared with local health-focused groups to strengthen public health outreach within Newark.

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[28] Children's Defense Fund-Ohio, *Ohio KIDS COUNT 2018: Understanding and Addressing the Changing Needs of Ohio's Families and Their Children* 14-15, 26 (Dec. 2018), https://cdfohio.org/wp-content/uploads/sites/6/2018/12/Ohio-Kids-Count-Data-Book-2018.pdf.

[29] *Id.* at 16.

[30] *See* Advocates for Children of New Jersey, *New Jersey County Profiles, 2017*, https://acnj.org/new-jersey-kids-count-2017/new-jersey-county-profiles-2017/ (last visited Mar. 26, 2019); Advocates for Children of New Jersey, *Newark Kids Count 2018: A City Profile of Child Well-Being* (2018), https://acnj.org/downloads/2018_03_27_newark_kids_count.pdf.

[31] *See* Advocates for Children of New Jersey, *Newark Kids Count 2018*, *supra* note 30, at 10.

[32] *Id.* at 10-12.

2. Public Health

The Colorado Health Foundation ("CHF") relies on various forms of evidence and data, including accurate census data, to inform its funding decisions and track, research, analyze, and ultimately report on health status and other determinants of health across the State of Colorado. In making funding decisions, CHF considers data showing where certain populations are concentrated in the state and where populations are growing or shrinking. Data regarding age composition, educational attainment, housing affordability, access to food, and income disparities are all strong indicators of the types of health services a community is likely to need. CHF uses these data points from the decennial census and the ACS to determine how to distribute funding to those communities in Colorado with the greatest need.[33]

In addition, through its place-based efforts (known as "locally focused work"), which cut across all of its priorities, CHF has established long-term partnerships with four local communities in the state and is working to expand the program to four additional communities in the near future. As part of this program, CHF staff spend time getting to know each community, looking for opportunities to build the capacity of local institutions, and improve policies and systems—all with a focus on identifying areas of need and improving health outcomes in the community.[34] Decennial census data and ACS data inform CHF

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[33] *See* Colorado Health Foundation, *How We Work*, https://www.coloradohealth.org/how-we-work (last visited Mar. 26, 2019).

[34] *See* Colorado Health Foundation, *Locally-Focused Work*, https://coloradohealth.org/locally-focused-work (last visited Mar. 26, 2019).

about the demographic characteristics of these communities and thereby enable CHF to tailor its work to the communities' specific needs.

In another part of the country, the Westchester Community Foundation, an affiliate of the New York Community Trust, uses census data and ACS data to generate the Westchester Index. An individual's health is not only the result of his or her access to medical care, but also is correlated with numerous socioeconomic factors, including education, employment, income, and housing. The Westchester Index is an interactive map that allows users to track these social determinants of health in Westchester County, New York, by layering census data and ACS data on top of data from the New York State Departments of Health and Education.[35] The index includes more than 200 indicators and is searchable by ZIP Code, census tract and block, school district, and municipality.[36] With this information, users are able to identify communities with increased socioeconomic burdens, gaps in access to health care, or increased health risks, and thereby determine how to allocate resources or implement targeted programs to address these challenges.[37]

The California Endowment employs census data extensively in Building Healthy Communities ("BHC"), its ten-year, $1 billion comprehensive plan

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[35] *See* Westchester Community Foundation, *Westchester Index*, https://wcgis.maps.arcgis.com/apps/webappviewer/index.html?id=3a8d6042451c49589a6efdae9715a0da (last visited Mar. 26, 2019).

[36] *Id.*

[37] *See id.*; Westchester Community Foundation, *Guide to Using the Westchester Index*, https://docs.wixstatic.com/ugd/f4556c_fb4588d6db7a46d59da73ceb0b6571aa.pdf.

that invests in specific aggregations of census tracts in fourteen low-income communities across the State of California.[38] BHC used census data and census-derived data to define the initial geography of investment by assessing health status indicators, such as life expectancy, at the census tract level. Periodic evaluations of BHC's progress rely on the California Health Interview Survey, California Healthy Kids Survey, and other standardized surveys that utilize census data to inform statistical samples of small areas. Additionally, local evaluators employ census data to track a number of relevant health status measures at the local level.

3. Education

StriveTogether, a grantee of the Ford Foundation based in Cincinnati, Ohio, seeks to improve educational opportunities for children throughout the nation and ensure that every child succeeds from "cradle to career."[39] StriveTogether relies on accurate census data to help its local partners better understand educational disparities and design interventions to better support the populations they serve. For example, StriveTogether used census data to determine that high school graduates earn at least $10,000 more annually than individuals who did not complete high school.[40] Accordingly, StriveTogether has focused

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[38] *See* The California Endowment, *Building Healthy Communities*, https://www.calendow.org/building-healthy-communities/ (last visited Mar. 26, 2019).

[39] StriveTogether, *About Us*, https://www.strivetogether.org/about/ (last accessed Mar. 26, 2019).

[40] *See* StriveTogether, *Cradle to Career Core Outcome Areas* 2 (2013), https://www.strivetogether.org/wp-content/uploads/2017/

on directing resources toward ensuring that more students graduate from high school.[41]

Lumina Foundation, a national private foundation located in Indianapolis, is working to ensure that 60% of all Americans hold a postsecondary degree, certificate, or other high-quality credential beyond a high school diploma by the year 2025. In service of that goal, Lumina Foundation uses census data to track progress at the national, state, and local levels and provides grants to assist state and city governments throughout the country in closing gaps in educational attainment.[42] In some instances, Lumina Foundation uses decennial census data and ACS data to analyze demographics and rates of educational attainment in potential grantee states and cities and determine where the grants will be most effective.[43] Moreover, in applying for the grants, states and cities must set targets for educational attainment. Lumina Foundation uses census data to measure the grantees'

06/StriveTogether-cradle-to-career-outcomes-research-publication.pdf.

[41] *Id.* at 2-3.

[42] *See* Lumina Foundation, *A Stronger Nation: Learning Beyond High School Builds American Talent* (2019), http://strongernation.luminafoundation.org/report/2019/#nation.

[43] *See* Lumina Foundation, *Lumina's 17 Talent Hub Cities Promote Education, Racial and Economic Justice* (Oct. 2, 2017), https://www.luminafoundation.org/news-and-views/luminas-17-talent-hub-cities-promote-education-equity; Lumina Foundation, *New Initiative Will Help States Address Postsecondary Outcomes Among Students of Color, Boost People With Education After High School* (July 12, 2017), https://www.luminafoundation.org/news-and-views/tie-initiative-will-help-states-address-postsecondary-outcomes-among-students-of-color.

progress toward those targets and hold them accountable to their goals.

A grantee of the Thornburg Foundation, the Cradle to Career Policy Institute at the University of New Mexico ("CCPI"), uses ACS data to create its statewide early childhood capacity maps. This interactive resource allows users to select a county of interest and examine early childhood services within that county, such as childcare, pre-kindergarten programs, home visiting, Early Head Start, and Head Start.[44] The maps also compare the available services against estimates of need, which have been established to assist stakeholders in assessing where young children remain underserved.[45] For example, based on ACS data, the map estimates for each county the number of children under age five, the number of low-income young children, and the number of young children living in households in which both parents work.[46] These estimates, when mapped against New Mexico's early childhood services, help researchers, policymakers, and other stakeholders identify areas in the state that are most suitable for strategic expansion of services.

4. Community and Economic Development

Based in North Carolina, the Mary Reynolds Babcock Foundation ("MRBF") relies on accurate census data and census-derived data to understand

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[44] *See* Cradle to Career Policy Institute, *NM Early Childhood Care and Education Services*, http://ccpi.unm.edu/visualizations/nm-early-childhood-care-and-education-services (last visited Mar. 26, 2019).

[45] *See id.*

[46] *See id.*

demographic and socioeconomic trends in the South, including population density, race, employment, income, and home ownership. As part of its focus on poverty alleviation, MRBF supports community development financial institutions, which provide non-predatory lending and other financial services to low-wealth and underbanked areas.[47] These grantees use decennial census data and ACS data to target their services to high-poverty areas with little access to credit. Accurate data help them design loan products and tailor their financial services to specific communities. They also use census information to determine the current number of businesses and community facilities—such as hospitals, clinics, nursing homes, police and fire stations, child care centers, jails, courthouses, airports, and schools—in an area to best determine how to support existing institutions or finance new ones.

The Joyce Foundation, a private foundation located in Chicago that works to improve quality of life in the Great Lakes region, used census data in developing its current grant-making strategy. The Joyce Foundation conducted a landscape assessment of the Great Lakes states, which relied heavily on decennial census data and the Census Bureau's population estimates. That assessment showed that population growth in the Great Lakes region is projected to be slower than in the rest of the country and will be driven more by a steady stream of births than by migration from other

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[47] *See* Justin Maxson, Mary Reynolds Babcock Foundation, *A Proven Way to Battle Rural America's Poverty*, (July 11, 2018), https://www.mrbf.org/blog/proven-way-battle-rural-americas-poverty; Uplift America, *2017 Progress Report* 3 (2018), http://upliftamerica.org/news/2018/6/11/uplift-america-releases-2017-progress-report.

states and nations.[48] Based on this analysis, the Joyce Foundation adopted new strategic priorities for the 2018-2020 grant-making cycle, with an emphasis on investing in policies to support young families and their children so that they remain in the region, equipped with the knowledge and skills to contribute to regional growth and prosperity.[49]

In another major economic hub, Silicon Valley Community Foundation ("SVCF") has relied on census data and census-derived data in determining how to address income inequality. For example, SVCF funds the Silicon Valley Competitiveness and Innovation Project, an initiative that monitors Silicon Valley's climate for innovation and works to ensure that residents of the region have access to job opportunities and prosperity. The project's 2018 annual report relied on decennial census data and ACS data in determining that overall employment in the region had increased by 29% from 2000 to 2016, while housing stock had increased only by 4% during that same time period.[50] The report also relied on ACS data in determining that overall commute time in the region had dramatically increased from 2000 to 2016.[51] Based on these analyses, the report made recommendations for increasing investment in transporta-

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[48] *See* The Joyce Foundation, *What We Fund*, http://www.joycefdn.org/apply/what-we-fund (last visited Mar. 26, 2019).

[49] *Id.*

[50] *See* Silicon Valley Leadership Group & Silicon Valley Community Foundation, *Silicon Valley Competitiveness and Innovation Project - 2018 Update* 7 (Feb. 2018), https://svcip.com/files/SVCIP_2018.pdf.

[51] *Id.* at 18.

tion infrastructure and developing a permanent funding source for affordable housing.[52]

III. THE AVAILABLE ANALYSES STRONGLY INDICATE THAT INCLUSION OF THE CITIZENSHIP QUESTION WILL HAVE A MATERIALLY NEGATIVE IMPACT ON THE ACCURACY OF CENSUS DATA AND ON THE WORK OF PHILANTHROPIC INSTITUTIONS

The available information regarding the likely impact of adding the citizenship question to the 2020 Census strongly indicates that the question will discourage households that contain at least one noncitizen from responding and significantly distort the accuracy of census data and census-derived data. This preliminary assessment confirms the need for a thorough vetting of the impact of addition of the question, which cannot be accomplished before the 2020 Census.

The U.S. Census Bureau's own initial analyses indicate that the addition of the citizenship question to the 2020 Census will result in a sizable decline in the self-response rate of households with at least one noncitizen. *New York v. U.S. Dep't of Commerce*, 351 F. Supp. 3d 502, 566 (S.D.N.Y. 2019) (noting that U.S. Census Bureau analyses show that the addition of the citizenship question to the 2020 Census will result in at least a 5.8% decline in the self-response rate of households with one or more noncitizens).[53] House-

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[52] *Id.* at 24.

[53] *See also* J. David Brown, et al., *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census* 34-35 (2018), https://www2.census.gov/ces/wp/2018/CES-WP-18-38.pdf (finding that the self-response rate of noncitizen households was

holds that do not self-respond to the decennial census are also not inclined to cooperate with enumerators who come to their doors, which results in the use of their neighbors as proxy respondents on their behalf.[54] But those proxies typically "supply poor quality individual demographic and socioeconomic characteristic information about the person on behalf of whom they are responding."[55]

A decline in the response rates of households that contain at least one noncitizen also will result in a significant undercount of the citizens who live in those households.[56] Noncitizens often live in households with others who are citizens.[57] In 2016, approximately 14% of the total U.S. population, or 45 million people, lived in a household with at least one noncitizen, and more than 13 million children—many of whom are citizens—lived in those households.[58] Furthermore, a majority of noncitizens are lawful permanent

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18.9% lower in the 2010 ACS, which included a citizenship question, than in the 2010 Census, which did not include a citizenship question).

[54] *Id.* at 41.

[55] *Id.*

[56] *Id.*; Edward Kissam, et al., *San Joaquin Valley Latino Immigrants: Implications of Survey Findings for Census 2020* 2 (Jan. 2019), https://www.shfcenter.org/assets/SJVHF/SJVCRP_Survey_Findings_Report_011819_Web.pdf (finding that adding the citizenship question would decrease the willingness to respond to the census among U.S.-born citizens who are second-generation Latino immigrants from 89% to 49%).

[57] *See* Beth Jarosz, *Citizenship Question Risks a 2020 Census Undercount in Every State, Especially Among Children* (Oct. 5, 2018), https://www.prb.org/citizenship-question-risks-a-2020-census-undercount-in-every-state-especially-among-children.

[58] *Id.*

residents, visa holders, or refugees.[59] Thus, declines in the response rates of households containing noncitizens will result in widespread undercounting of people who are lawfully present in the United States.

Even in the absence of the citizenship question, certain populations, such as children, people of color, Native Americans, immigrants, low-income individuals, and residents of rural areas, have been hard to count in recent censuses.[60] Researchers have posited that the citizenship question will exacerbate significant undercounting of populations that have been traditionally hard to count because those populations are more likely to live in households with non-

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[59] Henry J. Kaiser Family Foundation, *Health Coverage of Immigrants* (Feb. 15, 2019), https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/.

[60] *See, e.g.*, U.S. Census Bureau National Advisory Committee on Racial, Ethnic and Other Populations, *FINAL REPORT: Administrative Records, Internet and Hard to Count Population Working Group* 7-9 (2016), https://www2.census.gov/cac/nac/reports/2016-07-admin_internet-wg-report.pdf (noting that racial and ethnic minorities, persons who do not speak English fluently, low-income populations, homeless persons, undocumented immigrants, young mobile persons, and children have been harder to reach and enumerate); Cara Brumfield & Sophie Khan, *Counting Rural America: A Guide to 2020 Census Operations* 3 (Oct. 10, 2018), http://www.georgetownpoverty.org/wp-content/uploads/2018/10/GCPI-ESOI-Counting-Rural-America-20181010.pdf (explaining that households in very remote or rural geographies are at risk of being missed by the census); William P. O'Hare, et al., *The Invisible Ones: How Latino Children Are Left Out of Our Nation's Census Count* 2 (Apr. 2016), https://www.childtrends.org/wp-content/uploads/2016/04/2016-16TheInvisibleOnesLatinoCensus.pdf (concluding that young children have a higher net census undercount rate than any other age group, and that Latino children account for a disproportionate share of the total net undercount for children under age five).

citizens.[61] For instance, in 2016, 20% of children under the age of five, 21% of people living in poverty, nearly 46% of the Asian population, and 45% of the Hispanic/Latino population in the United States lived in households with at least one noncitizen.[62] A recent study by the Harvard Kennedy School of Government estimated that the citizenship question would reduce artificially the number of Hispanics reported in the census by approximately 4.2 million.[63] The Census Bureau's own initial reports predict that the addition of the citizenship question poses a major barrier to census participation for certain traditionally hard-to-count groups.[64] Furthermore, many hard-to-count populations, including Asian Americans, African Americans, Pacific Islanders, and Latinos, are expe-

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[61] Matthew A. Baum, et al., *Estimating the Effect of Asking About Citizenship on the U.S. Census: Results from a Randomized Controlled Trial* 9 (2019), https://shorensteincenter.org/wp-content/uploads/2019/03/CensusCitizenship_March2019.pdf?x78124; Brown, *supra* note 53, at 18-19, 54; Jarosz, *supra* note 57.

[62] Jarosz, *supra* note 57.

[63] Baum, *supra* note 61, at 9.

[64] *See* U.S. Census Bureau, *2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey and Focus Groups: Key Findings for Creative Strategy* 42 (Oct. 31, 2018), https://www2.census.gov/cac/nac/meetings/2018-11/mcgeeney-evans-cbams.pdf (concluding that the citizenship question could be a barrier to participation in the census, quoting statements from immigrant populations); *see also* Sarah Evans, et al., *2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Focus Group Final Report* 57, 60 (Jan. 24, 2019), https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2020-report-cbams-focus-group.pdf (finding that addition of the citizenship question presents a high barrier to census participation for Middle Eastern and North African Women as well as United States residents who speak Spanish at home).

riencing rapid growth in the United States, so decreased participation by these populations could have a profound impact on the communities in which they live.[65]

An inaccurate census count and resulting inaccuracies in census-derived data will impede philanthropy's ability to identify the populations and communities that would benefit most from grants, programs, and services, and will prevent foundations and their grantees from assessing whether their work is making a difference. For example, without accurate census data and census-derived data, foundations investing in community development, such as the Kresge Foundation, would not be able to assess accurately how local and regional demographics are changing, which cities are becoming less affordable, which economies are booming and which are shrinking, and which populations are struggling to make ends meet. In turn, this would inhibit organizations like the Kresge Foundation from effectively setting priorities, tailoring their strategies to the local dynamics of the communities they serve, and determining where their dollars can make the greatest difference. Because foundations and their grantees use decennial census data and ACS data to assess need and measure progress over time, undercounting in a single decen-

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[65] *See, e.g.*, Jonathan Vespa, et al., *Demographic Turning Points for the United States: Population Projections for 2020 to 2060* 3, 7 (Mar. 2018), https://www.census.gov/content/dam/Census/library/publications/2018/demo/P25_1144.pdf (finding that the population of people who are more than two races is projected to be the fastest growing racial or ethnic group over the next few decades, followed by Asians, Hispanics, Pacific Islanders, and African Americans).

nial census is likely to have a long-term deleterious impact.

Moreover, inaccurate census data will impair the effectiveness of philanthropic entities' partnerships with federal, state, and local programs that seek to improve education, health, transportation, and other services for their populations. Inaccurate census data will provide an incomplete picture of where underserved populations are concentrated as well as the social, educational, and economic conditions these populations face. State and local governments and foundations will need to invest in gathering and analyzing their own data to compensate for shortcomings in federal data, which is likely to result in incomplete and sometimes inconsistent data sources. Governments in rural areas and smaller philanthropic institutions will be disproportionately affected because many lack the resources to collect their own data and conduct quality research. Without the benefit of accurate federal data, governments, foundations, and grantees will not effectively distribute resources, design programs, or develop successful strategies to serve populations in need.[66] Inefficiencies in government funding and decision-making will place greater demands on philanthropic groups and grantees that

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[66] *See, e.g.*, Rule 26(A)(2)(B) Expert Report and Declaration of Andrew Reamer, PhD at 41, *New York v. U.S. Dep't of Commerce*, No. 1:18-cv-2921 (S.D.N.Y. Sept. 7, 2018), https://www.dropbox.com/s/7yfhywwqggymxok/Expert%20Report%20of%20Andrew%20Reamer.pdf?dl=0 (finding that an undercount would lead to significant declines in federal funding for Medicaid, the State Children's Health Insurance Program, the Supplemental Nutrition Program for Women, Infants, and Children, the Social Services Block Grant Program, and Title I grants to local education agencies).

seek to fill in gaps in government services. Philanthropy will not be able to make up the shortfall.

All of the available data strongly suggest that the citizenship question is virtually certain to result in substantial undercounting of populations that have been hard to count in past censuses, dramatically interfering with philanthropic institutions' abilities to identify and support underserved populations. But because the citizenship question was not thoroughly tested by the U.S. Census Bureau, the full impact the citizenship question would have on the 2020 Census and the philanthropic organizations that would rely on it cannot be fully assessed. At this point, the U.S. Census Bureau will be unable to thoroughly and adequately test the citizenship question before the 2020 Census. The failure of the U.S. Census Bureau to conduct such thorough testing requires affirming the District Court's determination that the citizenship question be set aside.

CONCLUSION

For the foregoing reasons, the *amici curiae* respectfully request that the Court affirm the judgment of the District Court.

Respectfully submitted,

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April 1, 2019

APPENDIX

APPENDIX

List of *Amici Curiae*

The Annie E. Casey Foundation

The Annie E. Casey Foundation creates a brighter future for the nation's children by developing solutions to strengthen families, build paths to economic opportunity, and transform struggling communities into safer and healthier places to live, work, and grow.

The Bauman Foundation

The Bauman Foundation, founded in 1987, is a private foundation dedicated to achieving the values of a true democratic society—the common good and general welfare, as articulated in the Constitution.

The California Endowment

The California Endowment is a private statewide health foundation. Its mission is to expand access to affordable quality health care for underserved individuals and communities and to promote fundamental improvements in the health status of all Californians. The Endowment works with nonprofit, government, and private sector partners to promote the social, economic and civic power of residents and communities for better health outcomes for all Californians.

The Colorado Health Foundation

The Colorado Health Foundation is the state's largest private foundation and is dedicated to grant-making, policy advocacy, and private sector partnerships that advance the Foundation's mission of improving the health of Coloradans.

Ford Foundation

The Ford Foundation is a private foundation that makes an average of $500 million in grants around the world annually. Its mission is to reduce poverty and injustice, strengthen democratic values, promote international cooperation, and advance human achievement.

The Fund for New Jersey

The Fund for New Jersey is a private foundation that makes grants to nonprofit organizations working to improve the quality of public policy decision-making on the most significant issues affecting the people of New Jersey and the region.

The Funders' Committee for Civic Participation

The Funders' Committee for Civic Participation (FCCP), a project of NEO Philanthropy, Inc., is a network of nearly 100 philanthropic institutional members that share an underlying conviction that all people deserve a voice in our democratic process. FCCP provides funders with a community in which to build connections, a stage for showcasing innovations, a forum for strategic dialogue and collaboration, and a resource for civic participation research and tools.

Funders Together to End Homelessness

Funders Together to End Homelessness is a national network of more than 230 foundations, United Ways, and individual philanthropists working to prevent and end homelessness.

The Joyce Foundation

The Joyce Foundation is a nonpartisan priv..te foundation based in Chicago, Illinois. Its mission is to support policies that improve quality of life, promote

safe and healthy communities, and build a just society for the people of the Great Lakes. Joyce focuses its grant making in Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin, and partners with funders to explore promising policy solutions in other states or at the federal level.

The Kresge Foundation

The Kresge Foundation is one of our nation's oldest and largest foundations, dedicated to expanding opportunity in America's cities. It seeks to create pathways to social and economic opportunity for all Americans, and is opposed to enshrining barriers to mobility in public policy, perpetuating racial, ethnic, and religious discrimination, and corroding compassion for the least fortunate among us.

Lumina Foundation

Lumina Foundation is an independent, national, private foundation located in Indianapolis committed to making opportunities for learning beyond high school available to all. The nation faces an urgent and growing need for talent. That's why Lumina Foundation works to ensure that, by 2025, 60 percent of Americans hold a credential beyond high school—a quality credential that prepares people for informed citizenship and economic success.

The Mary Reynolds Babcock Foundation

The Mary Reynolds Babcock Foundation's mission is helping to move people and places out of poverty in 11 Southern states.

Minnesota Council on Foundations

Minnesota Council on Foundations represents corporate giving programs, community foundations, and private foundations in Minnesota that, together,

account for over $1 billion annually in community-focused grant-making.

New Mexico Association of Grantmakers

New Mexico Association of Grantmakers is a network of 40 foundations that make approximately $70 million annually in grants to New Mexico organizations. It provides programs, research and educational resources, and networking opportunities for grantmakers throughout New Mexico. The state's unique demographic characteristics include significant Native American, Hispanic, and immigrant populations.

The New York Community Trust, the Long Island Community Foundation, and the Westchester Community Foundation

The New York Community Trust, with its affiliates the Long Island Community Foundation and the Westchester Community Foundation, is a grantmaking foundation dedicated to improving the lives of residents of New York City and its suburbs. It brings together thousands of individuals, families, foundations, and businesses to build a better community and support nonprofits that make a difference.

Philanthropy California

Philanthropy California is an alliance of Northern California Grantmakers, San Diego Grantmakers, and Southern California Grantmakers, representing over 600 foundations that give on average $6 billion annually to nonprofits that provide support and services to people across the state and country.

Philanthropy New York

Philanthropy New York is a nonprofit association of approximately 280 grantmakers either located in New York or funding in New York. Its members' missions

focus on a wide range of issues and geographic locations. With grant portfolios totaling over $6 billion a year to nonprofits, its members seek to support the changes needed to develop a more equitable, sustainable and democratic society.

Philanthropy Northwest

Philanthropy Northwest, a membership network of more than 170 grantmakers across Alaska, Idaho, Montana, Oregon, Washington and Wyoming, promotes, facilitates, and drives collaborative philanthropic action to strengthen communities in the Northwest. Philanthropy Northwest works to build a more prosperous, vibrant, healthy, diverse, inclusive, and equitable region. The six member states have vastly diverse populations, including significant Native and rural communities.

Philanthropy Ohio

Philanthropy Ohio is a statewide association that provides the knowledge, network, and tools to help people become more effective, powerful change agents in their communities.

The Piton Foundation

For more than 40 years, the Piton Foundation, which is part of Gary Community Investments, has been committed to improving the lives of Colorado's low-income children and their families by increasing access to quality early childhood and youth development opportunities and fostering healthy family and community environments.

The Samuel S. Fels Fund

The Samuel S. Fels Fund is a private foundation with a commitment to improving conditions and opportunities for marginalized communities within the City of Philadelphia.

The Sapelo Foundation

Since 1949, the Sapelo Foundation has operated as a private, family foundation. Based in Savannah, Georgia, it is dedicated to social change affecting vulnerable populations, rural communities, and the natural environment in the state of Georgia.

Silicon Valley Community Foundation

Silicon Valley Community Foundation (SVCF) advances innovative philanthropic solutions to challenging problems, engaging donors to make our region and world a better place for all.

The Thornburg Foundation

The Thornburg Foundation invests in enduring solutions to address systemic challenges facing New Mexico. Its strategic initiatives invest in advancing evidence-based solutions in early childhood education, food and agricultural resilience, and good government reform, while its community funding program seeks to strengthen nonprofits that serve communities in urgent need, conserve the environment, and advance opportunities for children and youth.

United Philanthropy Forum

As the largest and most diverse network in American philanthropy, United Philanthropy Forum holds a unique position in the social sector to help increase philanthropy's impact in communities across the country. It is a membership organization of more

than 75 regional and national philanthropy-serving organizations, representing 7,000 foundations and other funders, who work to make philanthropy better. The Forum envisions a courageous philanthropic sector that catalyzes a just and equitable society where all can participate and prosper.

United Ways of California

United Ways of California is the state association of California's 31 United Ways. United Ways of California and its member United Ways fight for the health, education, and financial stability of every person, in every community.

The W.K. Kellogg Foundation

The W.K. Kellogg Foundation (WKKF), founded in 1930 by breakfast cereal innovator and entrepreneur, Will Keith Kellogg, is among the largest philanthropic foundations in the United States. Guided by the belief that all children should have the opportunity to thrive, WKKF works with communities throughout the United States and internationally, as well as with sovereign tribes.

The Women's Foundation of California

The Women's Foundation of California works to invest in, train, and connect community leaders to advance gender justice.